

Part 5

Office of State Debt Collection

63A-3-501 Definitions.

As used in this part:

- (1)
 - (a) "Accounts receivable" or "receivables" means any amount due to a state agency from an entity for which payment has not been received by the state agency that is servicing the debt.
 - (b) "Accounts receivable" includes unpaid fees, licenses, taxes, loans, overpayments, fines, forfeitures, surcharges, costs, contracts, interest, penalties, restitution to victims, third-party claims, sale of goods, sale of services, claims, and damages.
- (2) "Administrative offset" means:
 - (a) a reduction of an individual's tax refund or other payments due to the individual to reduce or eliminate accounts receivable that the individual owes to a state agency; and
 - (b) a reduction of an entity's tax refund or other payments due to the entity to reduce or eliminate accounts receivable that the entity owes to a state agency.
- (3) "Entity" means an individual, a corporation, partnership, or other organization that pays taxes to or does business with the state.
- (4) "Office" means the Office of State Debt Collection established by this part.
- (5) "Past due" means any accounts receivable that the state has not received by the payment due date.
- (6) "Political subdivision" means the same as that term is defined in Section 63G-7-102.
- (7) "Restitution to victims" means restitution ordered by a court to be paid to a victim of an offense in a criminal or juvenile proceeding.
- (8)
 - (a) "State agency" includes:
 - (i) an executive branch agency;
 - (ii) the legislative branch of state government; and
 - (iii) the judicial branches of state government, including justice courts.
 - (b) "State agency" does not include:
 - (i) any institution of higher education;
 - (ii) except in Subsection 63A-3-502(7)(g), the State Tax Commission; or
 - (iii) the administrator of the Uninsured Employers' Fund appointed by the Labor Commissioner under Section 34A-2-704, solely for the purposes of collecting money required to be deposited into the Uninsured Employers' Fund under:
 - (A) Section 34A-1-405;
 - (B) Title 34A, Chapter 2, Workers' Compensation Act; or
 - (C) Title 34A, Chapter 3, Utah Occupational Disease Act.
- (9) "Writing-off" means the removal of an accounts receivable from an agency's accounts receivable records but does not necessarily eliminate further collection efforts.

Amended by Chapter 129, 2016 General Session

Amended by Chapter 298, 2016 General Session

63A-3-502 Office of State Debt Collection created -- Duties.

- (1) The state and each state agency shall comply with the requirements of this chapter and any rules established by the Office of State Debt Collection.

- (2) There is created the Office of State Debt Collection in the Division of Finance.
- (3) The office shall:
- (a) have overall responsibility for collecting and managing state receivables;
 - (b) assist the Division of Finance to develop consistent policies governing the collection and management of state receivables;
 - (c) oversee and monitor state receivables to ensure that state agencies are:
 - (i) implementing all appropriate collection methods;
 - (ii) following established receivables guidelines; and
 - (iii) accounting for and reporting receivables in the appropriate manner;
 - (d) assist the Division of Finance to develop policies, procedures, and guidelines for accounting, reporting, and collecting money owed to the state;
 - (e) provide information, training, and technical assistance to each state agency on various collection-related topics;
 - (f) write an inclusive receivables management and collection manual for use by each state agency;
 - (g) prepare quarterly and annual reports of the state's receivables;
 - (h) create or coordinate a state accounts receivable database;
 - (i) develop reasonable criteria to gauge state agencies' efforts in maintaining an effective accounts receivable program;
 - (j) identify any state agency that is not making satisfactory progress toward implementing collection techniques and improving accounts receivable collections;
 - (k) coordinate information, systems, and procedures between each state agency to maximize the collection of past-due accounts receivable;
 - (l) establish an automated cash receipt process between each state agency;
 - (m) assist the Division of Finance to establish procedures for writing off accounts receivable for accounting and collection purposes;
 - (n) establish standard time limits after which an agency will delegate responsibility to collect state receivables to the office or its designee;
 - (o) be a real party in interest for an account receivable referred to the office by any state agency or for any restitution to victims referred to the office by a court; and
 - (p) allocate money collected for judgments registered under Section 77-18-6 in accordance with Sections 51-9-402, 63A-3-506, and 78A-5-110.
- (4) The office may:
- (a) recommend to the Legislature new laws to enhance collection of past-due accounts by state agencies;
 - (b) collect accounts receivables for higher education entities, if the higher education entity agrees;
 - (c) prepare a request for proposal for consulting services to:
 - (i) analyze the state's receivable management and collection efforts; and
 - (ii) identify improvements needed to further enhance the state's effectiveness in collecting its receivables;
 - (d) contract with private or state agencies to collect past-due accounts;
 - (e) perform other appropriate and cost-effective coordinating work directly related to collection of state receivables;
 - (f) obtain access to records and databases of any state agency that are necessary to the duties of the office by following the procedures and requirements of Section 63G-2-206, including the financial disclosure form described in Section 77-38a-204;

- (g) collect interest and fees related to the collection of receivables under this chapter, and establish, by following the procedures and requirements of Section 63J-1-504:
 - (i) a fee to cover the administrative costs of collection, on accounts administered by the office;
 - (ii) a late penalty fee that may not be more than 10% of the account receivable on accounts administered by the office;
 - (iii) an interest charge that is:
 - (A) the postjudgment interest rate established by Section 15-1-4 in judgments established by the courts; or
 - (B) not more than 2% above the prime rate as of July 1 of each fiscal year for accounts receivable for which no court judgment has been entered; and
 - (iv) fees to collect accounts receivable for higher education;
 - (h) collect reasonable attorney fees and reasonable costs of collection that are related to the collection of receivables under this chapter;
 - (i) make rules that allow accounts receivable to be collected over a reasonable period of time and under certain conditions with credit cards;
 - (j) file a satisfaction of judgment in the court by following the procedures and requirements of the Utah Rules of Civil Procedure;
 - (k) ensure that judgments for which the office is the judgment creditor are renewed, as necessary;
 - (l) notwithstanding Section 63G-2-206, share records obtained under Subsection (4)(f) with private sector vendors under contract with the state to assist state agencies in collecting debts owed to the state agencies without changing the classification of any private, controlled, or protected record into a public record;
 - (m) enter into written agreements with other governmental agencies to obtain information for the purpose of collecting state accounts receivable and restitution for victims; and
 - (n) collect accounts receivable for a political subdivision of the state, if the political subdivision enters into an agreement or contract with the office under Title 11, Chapter 13, Interlocal Cooperation Act, for the office to collect the political subdivision's accounts receivable.
- (5) The office shall ensure that:
- (a) a record obtained by the office or a private sector vendor as referred to in Subsection (4)(l):
 - (i) is used only for the limited purpose of collecting accounts receivable; and
 - (ii) is subject to federal, state, and local agency records restrictions; and
 - (b) any person employed by, or formerly employed by, the office or a private sector vendor as referred to in Subsection (4)(l) is subject to:
 - (i) the same duty of confidentiality with respect to the record imposed by law on officers and employees of the state agency from which the record was obtained; and
 - (ii) any civil or criminal penalties imposed by law for violations of lawful access to a private, controlled, or protected record.
- (6)
- (a) The office shall collect accounts receivable ordered by a court as a result of prosecution for a criminal offense that have been transferred to the office under Subsection 76-3-201.1(5)(h) or (8).
 - (b) The office may not assess the interest charge established by the office under Subsection (4) on an account receivable subject to the postjudgment interest rate established by Section 15-1-4.
- (7) The office shall require a state agency to:
- (a) transfer collection responsibilities to the office or its designee according to time limits established by the office;

- (b) make annual progress towards implementing collection techniques and improved accounts receivable collections;
 - (c) use the state's accounts receivable system or develop systems that are adequate to properly account for and report their receivables;
 - (d) develop and implement internal policies and procedures that comply with the collections policies and guidelines established by the office;
 - (e) provide internal accounts receivable training to staff involved in the management and collection of receivables as a supplement to statewide training;
 - (f) bill for and make initial collection efforts of its receivables up to the time the accounts must be transferred; and
 - (g) submit quarterly receivable reports to the office that identify the age, collection status, and funding source of each receivable.
- (8) The office shall use the information provided by the agencies and any additional information from the office's records to compile a one-page summary report of each agency.
- (9) The summary shall include:
- (a) the type of revenue that is owed to the agency;
 - (b) any attempted collection activity; and
 - (c) any costs incurred in the collection process.
- (10) The office shall annually provide copies of each agency's summary to the governor and to the Legislature.
- (11) All interest, fees, and other amounts authorized to be charged by the office under Subsection (4):
- (a) are penalties that may be charged by the office; and
 - (b) are not compensation for actual pecuniary loss.

Amended by Chapter 129, 2016 General Session

63A-3-503 Legal services.

The Office of the Attorney General shall:

- (1) provide to the office all legal services and advice related to the collection of accounts receivable:
 - (a) owed to the state; or
 - (b) for which the office has collection responsibilities; and
- (2) establish policies governing:
 - (a) legal matters involving accounts receivable; and
 - (b) litigation of past-due accounts receivable.

Amended by Chapter 74, 2013 General Session

63A-3-504 Rulemaking authority -- Collection techniques.

In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office shall make rules:

- (1) providing details, as necessary, for the distribution of debts collected in accordance with the priorities under Subsection 63A-3-505(3); and
- (2) to govern collection techniques, which may include the use of:
 - (a) credit reporting bureaus;
 - (b) collection agencies;
 - (c) garnishments;

- (d) liens;
- (e) judgments; and
- (f) administrative offsets.

Renumbered and Amended by Chapter 79, 2011 General Session

63A-3-505 State Debt Collection Fund.

- (1) There is created an expendable special revenue fund entitled the "State Debt Collection Fund."
- (2) The fund consists of:
 - (a) all amounts appropriated to the fund under this chapter;
 - (b) fees and interest established by the office under Subsection 63A-3-502(4)(g); and
 - (c) except as otherwise provided by law, all postjudgment interest collected by the office or the state except postjudgment interest on restitution.
- (3) Money in this fund shall be used to pay for:
 - (a) the costs of the office in the performance of its duties under this chapter;
 - (b) restitution to victims to whom the debt is owed;
 - (c) interest accrued that is associated with the debt;
 - (d) principal on the debt to the state agencies or other entities that placed the receivable for collection; and
 - (e) other legal obligations including those ordered by a court.
- (4)
 - (a) The fund may collect interest.
 - (b) All interest earned from the fund shall be deposited in the General Fund.
- (5) The office shall ensure that money remaining in the fund at the end of the fiscal year that is not committed under the priorities established under Subsection (3) is deposited into the General Fund.

Amended by Chapter 192, 2016 General Session

63A-3-506 Allocation of funds.

- (1) Except as provided in Subsection (2), the money collected by the office less the office's fees shall be allocated on a prorated basis to the various revenue types that generated the accounts receivable.
- (2) Notwithstanding the requirements of Subsection (1):
 - (a) federal cost allocation requirements for specific accounts receivable related to programs that are supported by federal funds take precedence over other cost allocation methods provided in this section; and
 - (b) the office shall use interest and fees collected on past due accounts receivable as provided in Section 63A-3-505.

Renumbered and Amended by Chapter 79, 2011 General Session

63A-3-507 Administrative garnishment order.

- (1) If a judgment is entered against a debtor, the office may, subject to Subsection (2), issue an administrative garnishment order against the debtor's personal property and wages in the possession of a third party in the same manner and with the same effect as if the order was a writ of garnishment issued in district court.
- (2) The office may issue the administrative garnishment order if:

- (a) the order is:
 - (i) signed by the director or the director's designee; and
 - (ii) served by certified mail, return receipt requested, or as prescribed by Rule 4, Utah Rules of Civil Procedure; and
- (b)
 - (i) the underlying debt is for nonpayment of restitution as defined in Section 77-38a-102; or
 - (ii) the underlying debt is for nonpayment of an order for payment issued by the Labor Commission, established in Section 34A-1-103, for wage claims.
- (3) An administrative garnishment order issued in accordance with this section is subject to the procedures and due process protections provided by Rule 64D, Utah Rules of Civil Procedure, except as provided by Section 70C-7-103.
- (4) An administrative garnishment order issued by the office shall:
 - (a) contain a statement that includes:
 - (i) if known:
 - (A) the nature, location, account number, and estimated value of the property; and
 - (B) the name, address, and phone number of the person holding the property;
 - (ii) whether any of the property consists of earnings;
 - (iii) the amount of the judgment and the amount due on the judgment;
 - (iv) the name, address, and phone number of any person known to the plaintiff to claim an interest in the property; and
 - (v) that the plaintiff has attached or will serve the garnishee fee established in Section 78A-2-216;
 - (b) identify the defendant, including:
 - (i) the defendant's name and address; and
 - (ii) if known:
 - (A) the last four digits of the defendant's Social Security number;
 - (B) the last four digits of the defendant's driver license; and
 - (C) the state in which the driver license was issued;
 - (c) include one or more interrogatories inquiring:
 - (i) whether the garnishee is indebted to the defendant and, if so, the nature of the indebtedness;
 - (ii) whether the garnishee possesses or controls any property of the defendant, and, if so, the nature, location, and estimated value of the property;
 - (iii)
 - (A) whether the garnishee knows of any property of the defendant in the possession or under the control of another; and
 - (B) the nature, location, and estimated value of the defendant's property in possession or under the control of another, and the name, address, and phone number of the person with possession or control;
 - (iv) whether the garnishee is deducting a liquidated amount in satisfaction of a claim against the plaintiff or the defendant, a designation as to whom the claim relates, and the amount deducted;
 - (v) the date and manner of the garnishee's service of papers upon the defendant and any third party;
 - (vi) the dates on which previously served writs of continuing garnishment were served, if any; and

- (vii) any other relevant information the office may request, including the defendant's position, rate, and method of compensation, pay period, or computation of the amount of the defendant's disposable earnings;
 - (d) notify the defendant of the defendant's right to reply to answers and request a hearing as provided by Rule 64D, Utah Rules of Civil Procedure; and
 - (e) state where the garnishee may deliver property.
- (5)
- (a) A garnishee who acts in accordance with this section and the administrative garnishment issued by the office is released from liability unless an answer to an interrogatory is successfully controverted.
 - (b) Except as provided in Subsection (5)(c), if the garnishee fails to comply with an administrative garnishment issued by the office without a court or final administrative order directing otherwise, the garnishee is liable to the office for an amount ordered by the court, including:
 - (i) the value of the property or the value of the judgment, whichever is less;
 - (ii) reasonable costs; and
 - (iii) attorney fees incurred by the parties as a result of the garnishee's failure.
 - (c) If the garnishee shows that the steps taken to secure the property were reasonable, the court may excuse the garnishee's liability in whole or in part.
- (6) A creditor who files a motion for an order to show cause under this section shall attach to the motion a statement that the creditor has in good faith conferred or attempted to confer with the garnishee in an effort to settle the issue without court action.
- (7) A person is not liable as a garnishee for drawing, accepting, making, or endorsing a negotiable instrument if the instrument is not in the possession or control of the garnishee at the time of service of the administrative garnishment order.
- (8)
- (a) A person indebted to the defendant may pay to the office the amount of the debt or an amount to satisfy the administrative garnishment.
 - (b) The office's receipt of an amount described in Subsection (8)(a) discharges the debtor for the amount paid.
- (9) A garnishee may deduct from the property any liquidated claim against the defendant.
- (10)
- (a) If a debt to the garnishee is secured by property, the office:
 - (i) is not required to apply the property to the debt when the office issues the administrative garnishment order; and
 - (ii) may obtain a court order authorizing the office to buy the debt and requiring the garnishee to deliver the property.
 - (b) Notwithstanding Subsection (10)(a)(i):
 - (i) the administrative garnishment order remains in effect; and
 - (ii) the office may apply the property to the debt.
 - (c) The office or a third party may perform an obligation of the defendant and require the garnishee to deliver the property upon completion of performance or, if performance is refused, upon tender of performance if:
 - (i) the obligation is secured by property; and
 - (ii)
 - (A) the obligation does not require the personal performance of the defendant; and
 - (B) a third party may perform the obligation.
- (11)
- (a) The office may issue a continuing garnishment order against a nonexempt periodic payment.

- (b) This section is subject to the Utah Exemptions Act.
- (c) A continuing garnishment order issued in accordance with this section applies to payments to the defendant from the date of service upon the garnishee until the earlier of the following:
 - (i) the last periodic payment;
 - (ii) the judgment upon which the administrative garnishment order is issued is stayed, vacated, or satisfied in full; or
 - (iii) the office releases the order.
- (d) No later than seven days after the last day of each payment period, the garnishee shall with respect to that period:
 - (i) answer each interrogatory;
 - (ii) serve an answer to each interrogatory on the office, the defendant, and any other person who has a recorded interest in the property; and
 - (iii) deliver the property to the office.
- (e) If the office issues a continuing garnishment order during the term of a writ of continuing garnishment issued by the district court, the order issued by the office:
 - (i) is tolled when a writ of garnishment or other income withholding is already in effect and is withholding greater than or equal to the maximum portion of disposable earnings described in Subsection (12);
 - (ii) is collected in the amount of the difference between the maximum portion of disposable earnings described in Subsection (12) and the amount being garnished by an existing writ of continuing garnishment if the maximum portion of disposable earnings exceed the existing writ of garnishment or other income withholding; and
 - (iii) shall take priority upon the termination of the current term of existing writs.
- (12) The maximum portion of disposable earnings of an individual subject to seizure in accordance with this section is the lesser of:
 - (a) 25% of the defendant's disposable earnings for any other judgment; or
 - (b) the amount by which the defendant's disposable earnings for a pay period exceeds the number of weeks in that pay period multiplied by 30 times the federal minimum wage as provided in 29 U.S.C. Sec. 201 et seq., Fair Labor Standards Act of 1938.
- (13) The administrative garnishment instituted in accordance with this section shall continue to operate and require that a person withhold the nonexempt portion of earnings at each succeeding earning disbursement interval until the total amount due in the garnishment is withheld or the garnishment is released in writing by the court or office.

Enacted by Chapter 69, 2013 General Session